Chapter XLVII.

PREROGATIVES OF THE HOUSE AS TO REVENUE LEGISLATION.

1480. Revenue bills must originate in the House, but the Senate may concur with amendments.—The Constitution of the United States in section 7 of Article I provides:

All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments as on other bills.

1481. In 1807 the House refused to agree to Senate amendments enlarging the scope of a revenue bill.—On February 26, 1807,[1] the House considered the amendments proposed by the Senate to the bill entitled "An act repealing the acts laying duties on salt, and continuing in force, for a further time, the first section of the act entitled 'An act further to protect the commerce and seamen of the United States against the Barbary powers,' " and it was

Resolved, That this House do disagree to the amendments of the Senate; and do adhere to the said bill as the same originally passed this House, and was sent to the Senate for their concurrence.

The same day a message announced that the Senate adhered to their amendment, so the bill was lost.

The record of debates[2] shows that Mr. John Randolph, of Virginia, assailed the Senate amendments because they went beyond amendment of the details of the bill, whereas under the Constitution he believed the Senate had no power to amend a money bill by varying the objects or altering the quantum.

1482. In 1830 a bill affecting the revenue was presented in the Senate and withdrawn, after a discussion of the constitutional question.—On February 23, 1830,[3] in the Senate, Mr. Thomas H. Benton, of Missouri, proposed a bill "to provide for the abolition of unnecessary duties, to relieve the

[1] Second session Ninth Congress, Journal, pp. 611, 613 (Gales & Seaton, ed.).
[2] Annals, pp. 630–636.
[3] First session Twenty-first Congress, Debates, pp. 172, 244, 245.

people from sixteen millions of taxes, and to improve the condition of the agriculture, manufactures, commerce, and navigation of the United States."

One section of this bill proposed to raise the duty on certain articles, and a question arose as to the Constitutional power of the Senate to originate such a measure.

Mr. Daniel Webster, of Massachusetts, having urged that the question was very important and merited a long discussion, Mr. Benton, on March 5, withdrew the bill.

1483. A bill to abolish a duty was refused consideration in the Senate, one objection being that the Senate had no right to originate such a measure.—On February 11, 1831,[1] in the Senate, Mr. Thomas H. Benton, of Missouri, asked leave to introduce a bill for the gradual abolition of the duty on alum salt.

This motion was opposed on two grounds, because a similar bill was on the table of the Senate already, and because the bill belonged to a class of revenue bills which the Senate did not have the right to originate.

Leave to introduce the bill was refused, yeas 17, nays 27.

1484. Early instances of Senate and House participation in revenue legislation.—On February 16, 1833, the bill (S. 121) to amend the act to alter and amend the several acts imposing duties on imports, approved July 14, 1832, was introduced on report from Committee on Finance in the Senate.[2] This bill restored the duty on certain articles of copper and tobacco.[3] It passed the Senate February 22,[4] and being sent to the House, was, on February 27,[5] reported favorably from the Committee on Ways and Means and referred to the Committee on the Whole House on the state of the Union. This bill was not considered further, and should not be confounded with the following: (S. 115) "To modify the act of the 14th of July, 1832, and all other acts imposing duties on imports," introduced by Mr. Henry Clay, of Kentucky, February 12, 1833.[6] Objection was made by Mr. John Forsyth, of Georgia, and others, that the bill was not constitutional, as the Senate did not have the power to originate such a bill.[7] The bill was considered and carried to a third reading, when, on February 26, it was laid on the table,[8] the bill of the House (H. R. 641) being received in the Senate at that time. This House bill had originally been reported on December 27,[9] but, on February 25, on motion of Mr. Robert P. Letcher, of Kentucky, the Senate bill proposed by Mr. Clay had been moved as a substitute and adopted, retaining, however, the House number[10] This bill passed the Senate and became a law.[11]

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[1] Second session Twenty-first Congress, Debates, p. 194.

[2] Second session Twenty-second Congress, Senate Journal, p. 187.

[3] Senate Journal, p. 314.

[4] Senate Journal, p. 204.

[5] House Journal, pp. 405, 434.

[6] Senate Journal, p. 171; Debates, p. 462.

[7] Debates, pp. 473, 479.

[8] Senate Journal, pp. 211–213; Debates, p. 786.

[9] House Journal, p. 105.

[10] House Journal, p. 415; Debates, p. 1772.

[11] House Journal, p. 476.

1485. The Senate having insisted on its right to add a revenue amendment to an appropriation bill, the House declined to proceed further with the bill.

Instance of a conference over the prerogatives of the two Houses respecting revenue legislation.

An instance wherein a conference committee appointed to consider a question of prerogative only originated and reported a bill.

On March 3, 1859,[1] Mr. Galusha A. Grow, of Pennsylvania, as a question of privilege, offered this resolution:

Resolved, That House bill No. 872, making appropriations for defraying the expenses of the Post-Office Department for the year ending 30th June, 1860, with the Senate amendments thereto, be returned to the Senate, as section 13 of said amendments is in the nature of a revenue measure.

Mr. Grow explained that section 13 raised the rate of postage.

Mr. John S. Phelps, of Missouri, contended that the revenue bills which should originate only in the House were such only as were contemplated in this clause of the Constitution.

The Congress shall have power to lay and collect taxes, duties, imposts, and excises.

The question being taken, the resolution was agreed to, yeas 116, nays 78.

The resolution of the House having been received in the Senate, Mr. John J. Crittenden, of Kentucky, proposed the following resolutions, which were agreed to:[2]

Resolved by the Senate of the United States, That the Senate and House, being of right equally competent, each to judge of the propriety and constitutionality of its own action, the Senate has exercised said right in its action on the amendments sent to the House, leaving to the House its right to adopt or reject each of said amendments at its pleasure.

Resolved, That this resolution be communicated to the House of Representatives, and that the bill and amendments aforesaid be transmitted therewith.

This message, with the bill and amendments, having been received in the House,[3] a motion to take them up under suspension of the rules failed, yeas 94, nays 85. Thereupon Mr. Phelps, from the Committee on Ways and Means,[4] reported a new appropriation bill for the Post-Office service, which was passed as H. R. No. 893.

In the Senate objection was made to this bill, and it went to the table, while a discussion arose as to the propriety of the parliamentary action[5] taken by the House.

Mr. Charles E. Stuart, of Michigan, offered this preamble and resolution:

The House of Representatives having, in the opinion of the Senate, departed from the proper parliamentary usages and method of transacting business between the two Houses by its action in regard to the bill of the House (No. 872), entitled "An act making appropriations for the service of the Post-Office Department during the fiscal year ending the 30th of June, 1860:" Therefore

Resolved, That the Senate appoint a committee of conference to meet a like committee on the part of the House of Representatives, for the purpose of consulting as to what action ought to be had by the respective Houses respecting the said bill.

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[1] Second session Thirty-fifth Congress, Journal, p. 571; Globe, pp. 1666, 1667.

[2] Globe, p. 1634.

[3] Globe, p. 1674; Journal, pp. 587, 591.

[4] The Committee on Ways and Means at that time reported appropriation bills.

[5] Globe, pp. 1644–1646.

The resolution being agreed to, Messrs. Stuart, James A. Pearce, of Maryland, and Solomon Foot, of Vermont, were appointed conferees on the part of the Senate.

This message being received in the House,[1] a question arose as to whether the conferees, if a conference should be agreed to, would have before them the bill (H. R. 872), which was before the House. The Speaker[2] ruled that the bill would remain in possession of the House. The House agreed to the conference, and Messrs. J. Letcher, of Virginia; L. O'B. Branch, of North Carolina, and Galusha A. Grow, of Pennsylvania, were appointed conferees.

In the last hours of the session this report was presented to the House[3] from the committee of conference:

> The committee of conference on the disagreement between the two Houses on the resolutions adopted by them, respectively, in relation to the action of the House on the Senate amendments to the bill (H. R. 872) making appropriations, etc., having met, after full and free conference, have agreed as follows:
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> That while neither House is understood to waive any constitutional right which they may respectively consider to belong to them, it be recommended to the House to pass the accompanying bill, and that the Senate concur in the same when it shall be sent to them.

The conference report having been agreed to, Mr. Letcher introduced the bill, which was numbered H. R. 894, and it was passed.[4] No point of order was made in the House against this proceeding. But in the Senate[5] Mr. Pearce referred to the fact that there was doubt of the power of the conferees to originate and report the bill. The principal objections to the bill were constitutional, however. It was urged, especially by Mr. Robert Toombs, of Georgia, that by passing the bill the Senate would surrender to the House a constitutional prerogative. Mr. Stephen A. Douglas, of Illinois, urged that the public service should not be crippled by a punctilio between the Senate and House; but this failed to move Messrs. Toombs, David C. Broderick, of California, and Judah P. Benjamin, of Louisiana, who interposed their objection to the second reading of the bill. In the midst of a speech by Mr. Toombs the hour of final adjournment arrived, and the Vice President declared the Senate adjourned sine die.[6]

1486. The House having questioned a Senate amendment providing a tax on incomes on a nonrevenue bill, the Senate withdrew the amendment.—On June 30, 1864,[7] Mr. Thaddeus Stevens, of Pennsylvania, submitted the following:

> *Resolved,* That the amendment of the section, being section No. 12, added by the Senate to House bill No. 549, in the opinion of this House, contravenes the first clause of the seventh section of the first article of the Constitution of the United States, and is an infringement of the privileges of this House, and that the said bill, with the amendments, be respectfully returned to the Senate with a message communicating this resolution.

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[1] Globe, p. 1682; Journal, p. 598.

[2] James L. Orr, of South Carolina, Speaker.

[3] Globe, p. 1684; Journal, p. 617.

[4] Journal, p. 618.

[5] Globe, pp. 1661–1663.

[6] In a speech made December 29, 1859, Mr. Grow quoted from the decision of the United States Supreme Court in the case of United States *v.* Bromley (12 Howard, p. 96) to show that legislation affecting postage was revenue legislation. (Cong. Globe, first session Thirty-sixth Congress, pp. 278, 279.)

[7] First session Thirty-eighth Congress, Journal, pp. 963, 968; Globe, p. 3427.

The bill (H. R. 549) further to regulate and provide for the enrolling and calling out of the national forces had been returned from the Senate with amendments, among which was No. 12, providing for a 5 per cent duty on all incomes to meet the cost of paying bounties and enforcing the draft.

Mr. Stevens said:

It is so clearly a violation of the privileges of the House that I think it ought not for a moment to be acquiesced in.

Without further debate the House agreed to the resolution.

The same day a message from the Senate announced that they, on reconsideration, had again passed the bill with all amendments previously concurred in except the section objected to by the House.

1487. After a full but unconclusive conference with the Senate, the House reaffirmed its own exclusive right to originate revenue measures.

There being a difference between the two Houses as to the right of the Senate to originate a revenue bill, the subject was committed to a conference.

A resolution relating to an alleged invasion of the prerogatives of the House presents a question of privilege.

On January 27, 1871,[1] Mr. Samuel Hooper, of Massachusetts, from the Committee on Ways and Means, as a question of privilege, submitted the following:

Resolved, That Senate bill 1083, to repeal so much of the act approved July 14, 1870, entitled "An act to reduce internal taxes, and for other purposes," as continues the income tax after the 31st day of December, 1869, be returned to that body with the respectful suggestion on the part of the House that section 7 of Article I of the Constitution vests in the House of Representatives the sole power to originate such measures.

The Speaker[2] having ruled that this presented a question of privilege, the resolution was agreed to.

The message was received in the Senate on January 30, and on the succeeding day was considered.[3] After debate the Senate adopted a preamble and resolution reciting the action of the House, and continuing:

And whereas the parliamentary law recognized by both Houses of Congress states that when the methods of Parliament are thought by the one House to have been departed from by the other a conference is asked to come to a right understanding thereon: Therefore,

Resolved, That the bill be returned to the House of Representatives, and that the Senate ask a conference on the question at issue between the Houses.

Messrs. John Scott, of Pennsylvania, Roscoe Conkling, of New York, and Eugene Casserly, of California, were appointed conferees on the part of the Senate.

The House agreed to the conference,[4] appointing Messrs. Hooper, William B. Allison, of Iowa, and Daniel W. Voorhees, of Indiana, to represent the House.

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[1] Third Session Forty-first Congress, Journal p. 227; Globe, p. 791.

[2] James G. Blaine, of Maine, Speaker.

[3] Globe, pp. 815, 842–846.

[4] Journal, p. 247; Globe, p. 862.

During the debate Mr. Samuel J. Randall, of Pennsylvania, inquired as to the scope of the conference. The Speaker replied:

When, on a previous occasion, on a post-office appropriation bill, a conference was asked by the Senate, it was granted by the House. The only thing, of course, committed to the conference is the point of difference. The bill will in no wise be in the hands of the conference for action. But the point of difference in 1859 between the two Houses was, at the request of the Senate, allowed to go to a conference committee. And the Chair states that under the uniform usage and courtesy observed between the two branches the usual way is to have a conference.

1488. This conference having failed to agree, on February 27, 1871, Mr. Hooper, for the House managers, submitted the reasons [1] which formed the basis of their action in the joint committee of conference, accompanied by this resolution:

Resolved, That this House maintains that it is its sole and exclusive privilege to originate all bills directly affecting the revenue, whether such bills be for the imposition, reduction, or repeal of taxes; and in the exercise of this privilege, in the first instance, to limit and appoint the ends, purposes, considerations, and limitations of such bills, whether relating to the matter, manner, measure, or time of their introduction; subject to the right of the Senate to "propose or concur with amendments, as in other bills."

The House conferees, in their report, stated that the Senate's request for a conference had been granted as an act of courtesy, the question involved being the privilege of the House. At the meeting of the conference the Senate conferees had submitted and maintained throughout these propositions:

First. That the words "all bills for raising revenue shall originate in the House of Representatives," in the seventh section of the first article of the Constitution, mean only bills the direct purpose of which is to raise revenue by the levy of taxes, imposts, duties, or excises.

Second. That a bill may originate in the Senate to repeal a law or portion of a law imposing such taxes, duties, imposts, or excise, even if the repeal of such repeal [law?] render necessary the imposition of other taxes; and Senate bill (S. 1083) being such an act, it is within the constitutional power of the Senate to originate it.

The committee on the part of the House maintained in reply that, according to the true intent and meaning of the Constitution, it is the right of the House of Representatives to originate all bills relating directly to taxation, including all bills imposing or remitting taxes; and that in the exercise of this right the House of Representatives shall decide the manner and time of the imposition and remission of all taxes, subject to the right of the Senate to amend any of such bills, originating in the House, before they have become a law.

After a long and full discussion the conferees failed to agree, and arranged to report to their respective Houses their disagreement, and such further report as they might decide to make. The House conferees therefore presented a report giving at length the reasons on which they had founded their action. From a careful review of the proceedings of the Constitutional Convention and a consideration of the analogy of the British constitution they derived the opinion that all bills directly affecting the revenue should originate in the House of Representatives. "The practice of the English Commons," says the report, "was to have all tax bills considered by a committee called the ways and means, and all appropriations were considered by a committee on supply. Analogous to this, the first Congress that assembled provided

[1] House Report No. 42.

a Committee of Ways and Means that should originate all revenue measures, whether of taxation or appropriation. The same Congress also borrowed another rule from the Commons, that this class of bills should be first considered in Committee of the Whole House on a day fixed, so that free discussion should be permitted and unlimited amendment allowed.

"Under these rules the right to originate not only tax and tariff bills, but also appropriation bills, was conceded to the House of Representatives until February 22, 1832, when Mr. Clay submitted certain resolutions in relation to the tariff, by which it was proposed to repeal the duties on all articles of importation not coming into competition with similar articles manufactured in the United States, etc."

"These resolutions were referred to the Committee on Manufactures, which committee, on the 30th of March, made a long report, accompanied by a bill proposing an absolute repeal of certain duties." This report led to a long debate on the constitutional power of the Senate to originate revenue bills or repeal duties. Finally, on motion of Mr. Dallas, the bill was laid on the table.[1]

"The question again came up in the Senate in 1833," continues the report, "when, at a time of great political excitement, reaching almost to rebellion, Mr. Clay, with a patriotic purpose, brought forward in the Senate his compromise tariff bill to reduce existing rates of duty on imported articles. The leading minds of the Senate revolted at what seemed to them an unconstitutional exercise of power, and the authority of the Senate under the clause now under consideration was debated by the ablest lawyers of that body."[2]

On February 27 the bill was laid on the table, a House bill for the same purpose having reached the Senate. The House bill was passed. In 1837, also, the Senate passed a bill to authorize the issue of Treasury notes. In the House, the question of the Senate's power being raised, the Senate bill was laid aside and a House bill covering the same object was passed.[3] The report continues:

> The question again appeared in the Senate in 1844, Mr. McDuffie introducing a bill to revive the act of March 2, 1833, known as the compromise tariff act, and modify the existing duties upon foreign imports in conformity to its provisions, the effect of which would be to largely reduce the duties and rates of duty provided for by the tariff act of 1842. The question of power, together with the bill, was referred to the Senate Committee on Finance, and on the 9th of January, 1844, was reported back to the Senate from that committee by Mr. Evans without amendment, accompanied by the following resolution:
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> *"Resolved,* That the bill * * * is a bill for raising revenue within the meaning of the seventh section of the first article of the Constitution, and can not, therefore, originate in the Senate: Therefore,
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> *"Resolved,* That it be indefinitely postponed."

After a long debate the resolution was adopted with but four dissenting votes.[4]

The report also refers to the action of the Senate in 1856, when it originated appropriation bills, which were tabled by the House.

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[1] Mr. Clay introduced his resolutions early in January, 1832. For introduction, report, and debate see Congressional Debates, first session Twenty-second Congress, pp. 66, 647, 678.

[2] Congressional Debates, second session Twenty-second Congress, pp. 462, 750.

[3] First session Twenty-fifth Congress, Journal, pp. 77, 79, 212.

[4] First session Twenty-eighth Congress, Globe, pp. 121, 633. For Senate debates at this time see Globe, pp. 162, 168, 176, 180, 186, 205, 222, 673, 674.

Next the report takes up certain citations of laws, fourteen in all, which had originated in the Senate, and which the Senate conferees had claimed were precedents, saying:

They seem to be, generally, bills intended to carry out, in good faith, treaty stipulations and commercial regulations arising under treaties with foreign countries. It is true that two of the acts cited reduced existing rates of duty, which reduction was acquiesced in by the House without raising the question of power. But it seems to your committee that one or two instances of waiver can not be considered as a surrender, on the part of the House, of a great constitutional privilege.

The committee also cite the loan bill in the Twenty-seventh Congress, saying:

The House does not deny the power of the Senate to amend any particular bill relating to revenue whether a loan bill, a tax bill, or an appropriation bill, which is all that was decided in this case.

After citing the action of the House of Commons in 1860 in asserting its paramount authority, both for the imposition and repeal of taxes, the report says:

It is assumed that, because the bill under consideration is for the purpose of absolutely repealing a tax, the Senate has jurisdiction. But it seems to your committee clear that if the Senate can repeal one tax they can repeal another, and thus originate measures affecting the entire system of taxation. If, instead of repealing the income tax, the Senate had originated and passed a measure repealing all laws imposing duties on imports, it would at once become necessary for the House to originate another measure imposing taxes to make up for the deficiency created by this great loss of revenue. It seems to us plain that this would be an interference with the present system of taxation, and virtually the surrender of the power to originate tax measures according to the will of the House. * * *

It seems clear to your committee, therefore, that the only way to preserve, in its fullness, the power to originate bills for raising revenue is to insist upon the right of the House to originate all bills relating directly to the revenue, whether imposing or remitting taxes; that the House should, in the first instance, be the judge of the manner, the measure, and the time of such impositions or remissions.

On March 3, 1871, the resolution recommended by the committee was agreed to by the House, without division, but after debate.[1]

The Senate conferees made to the Senate a report in which they adduced arguments in support of their position that the bill was properly passed by the Senate.[2]

1489. In 1872 the House and Senate, after discussion, disagreed as to limitations of Senate amendments to a revenue bill of the House.—On April 11, 1871,[3] Mr. John Sherman, of Ohio, had reported in the Senate with the unanimous indorsement of the Committee on Finance, the following, which was agreed to without division, on April 12:

Resolved, That the Committee on Finance is hereby instructed, during the recess of Congress, to carefully examine the existing system of taxation by the United States, with a view to propose such amendments to the bills of the House of Representatives repealing certain taxes now pending in the Senate as will simplify, revise, and reduce both the internal taxes and the duties on imported goods now in force, and in such manner that the aggregate of such taxes shall not exceed the sums required to execute the laws relating to the public debt and the current expenditures of the Government, administered with the strictest economy, and so that such taxes may also be distributed so as to impose the least possible burden upon the people.

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[1] Third session Forty-first Congress, Journal, p. 497; Globe, pp. 1928–1930. See also Globe Appendix, pp. 264–268, for speech of James A. Garfield.

[2] Senate Report No. 376.

[3] First session Fifty-second Congress, Globe, pp. 565, 598.

There was little discussion, and apparently none on the question of the privileges of the two Houses.

On April 19, 1871,[1] on motion of Mr. George F. Hoar, of Massachusetts, the House agreed to the following:

Resolved, That the Committee on Rules be directed to consider and report to the House at its next session how far the existing practice of amending, in the Senate, bills for raising revenue, by the addition of enactments not germane to the original bill, is in conformity with the Constitution, and whether any further rules or proceedings are needed to preserve the privileges of the House in the matter.

It does not appear that the committee reported.

On April 2, 1872,[2] Mr. Henry L. Dawes, of Massachusetts, from the Committee on Ways and Means, reported the following resolution:

Resolved, That the substitution by the Senate, under the form of an amendment, for the bill of the House (H. R. 1537) entitled "An act to repeal existing duties on tea and coffee," of a bill entitled "An act to reduce existing taxes," containing a general revision, reduction, and repeal of laws imposing import duties and internal taxes, is in conflict with the true intent and purpose of that clause of the Constitution which requires that "all bills for raising revenue shall originate in the House of Representatives;" and that therefore said substitute for House bill No. 1537 do lie upon the table.

And be it further resolved, That the Clerk of the House be, and is hereby, directed to notify the Senate of the passage of the foregoing resolution.

The resolution was debated at length, with reference to the principle of government involved in the compromise which resulted in the adoption of the provision of the Constitution,, and with reference to past precedents and to the proper construction of the terms of the constitutional provision. Mr. James Brooks, of New York, contributed as unwritten history the fact of which he was personally cognizant, that Mr. Clay, when he introduced the revenue reduction bill in the Senate in 1832, did not intend or expect it to pass, but did so solely for the purpose of causing a debate which should so instruct and influence the House of Representatives that they would take action. This was what happened, and as soon as the House, on the motion of his personal friend, Mr. Letcher, had passed the bill, Mr. Clay abandoned his Senate bill. In discussing the construction of the language of the Constitution, Mr. James A. Garfield, of Ohio, said:

What then, is the reasonable limit to this right of amendment? It is clear to my mind that the Senate's power to amend is limited to the subject-matter of the bill. That limit is natural, is definite, and can be clearly shown. If there had been no precedent in the case, I should say that a House bill relating solely to revenue on salt could not be amended by adding to it clauses raising revenue on textile fabrics, but that all the amendments of the Senate should relate to the duty on salt. To admit that the Senate can take a House bill consisting of two lines, relating specifically and solely to a single article, and can graft upon them in the name of an amendment a whole system of tariff and internal taxation, is to say that they may exploit all the meaning out of the clause of the Constitution which we are now, considering, and may rob the House of the last vestige of its rights under that clause. * * * Now I will not say, for I believe it can not be held, the mere length of an amendment shall be any proof of invasion of privileges of the House. True we sent to the Senate a bill of three or four lines, and they have sent back a bill of twenty printed pages. I do not deny their right to send back a bill of a thousand

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[1] First session Forty-second Congress, Journal, p. 194; Globe, p. 802.

[2] Second session Forty-second Congress, Journal, p. 620; Globe, pp. 2105, 2248, 2318, 2716.

pages as an amendment to our two lines. But I do insist that their thousand pages must be on the subject-matter of our bill.[1]

The resolution reported by Mr. Dawes was agreed to by a vote of yeas 153, nays 9.

On April 8 the resolution of the House came up in the Senate, and was referred to the Committee on Finance. On April 10 that committee reported it back, Mr. John Sherman, of Ohio, saying that it was the first time in the history of the country that the power of the Senate to propose amendments to revenue bills had been questioned. The Committee on Finance desired that the matter be referred for further examination to the Committee on Privileges and Elections. This action was taken, and on April 24 that committee made an elaborate report.

This report,[2] which was submitted on behalf of the committee by Mr. Matt. H. Carpenter, of Wisconsin, began with a review of the circumstances attending the controversy, and proceeded:

Assuming that a bill to abolish a certain duty or tax is a bill for raising revenue within the meaning of the Constitution, as the House of Representatives determined in regard to the bill abolishing the tax upon incomes, the power of the Senate in regard to it is regulated by the provision of the Constitution.

The Senate may propose or concur with amendments as on other bills, and the right of the Senate to put upon it the amendments with which it was returned to the House is, in the opinion of your committee, clearly conferred by this provision.

Without the provision of the Constitution under consideration, it will be conceded that such a bill might have originated in either House of Congress, and originating, as in this case, in the House of Representatives, the Senate might amend it in any particular and to any extent. But this provision of the Constitution is a limitation upon the power of the Senate which must be obeyed by the Senate to its full extent, but should not be extended beyond the fair scope and plain import of the phraseology employed. What, then, is the restriction laid upon the Senate? Simply and only this: The Senate shall not "originate" a bill for raising revenue, that being the exclusive prerogative of the House of Representatives. But, excepting only the origination of the bill, the Senate possesses the same power in regard to bills for raising revenue as in regard to any other bills; or, to quote the language of the Constitution, it may amend a bill for raising revenue as it may amend "any other bill."

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[1] In the preceding Congress (third session Forty-first Congress, Appendix of Globe, p. 265) Mr. Garfield went into this subject very elaborately. In that speech Mr. Garfield reviewed the English usage, the circumstances attending the adoption of the clause in the Constitution of the United States, and the following precedents of Congress: In the House on January 25, 1789 (First Congress, Annals, Vol. I, pp. 592, 593, 597, 603, 605, 607), where Madison, Livermore, Gerry, Lawrence, and Tucker, contended that the sole right of originating money bills belonged to the House; in the Senate in 1833 (Twenty-second Congress, Debates, Vol. IX, Pt. 1, pp. 462, 473, 477, 478, 722), where the tariff bill introduced by Mr. Clay was discussed and tabled, Messrs. Webster, Clay, Dickerson, and Forsyth denied the right of the Senate to originate a revenue bill; in the House in 1837 (Twenty-fifth Congress, Debates, Vol. XlV, Pt. 1, pp. 1152–1153, 522), when a Senate bill authorizing the issue of Treasury notes was, on September 30, discussed in Committee of the Whole and considered an invasion of the prerogatives of the House. As a result of the discussion the Senate bill was laid aside and a House bill on the same subject passed. This latter bill passed the Senate; in the Senate in 1842–43 (Twenty-eighth Congress), when, from January 19 to May 31, 1843, Mr. McDuffie's bill to revive the compromise tariff of 1833 was debated and by a vote of yeas 33, nays 4, was decided to be such a bill as could not originate in the Senate; and in the Senate in 1855 (Thirty-fourth Congress, Globe, January, 1856, pp. 160, 161, 162, 375, 376), where the Senate, in opposition to the influence of Messrs. Seward and Sumner, originated two general appropriation bills which were afterwards tabled by the House.

[2] Second session Forty-second Congress, Senate Report No. 146.

The report goes on to examine this contention in the light of English parliamentary history, which the framers of the Constitution had in mind when they gave to the Senate the power, not allowed to the House of Lords, of amending a money bill. The Constitution, in giving the power to amend, gave it in the fullest sense of the term, so as to include any amendment which might be in order under the rules of the Senate. A bill raising revenue might be amended like any other bill. The report then continues:

In opposition to this conclusion it has been urged that to permit the Senate to ingraft, by way of amendment, a general tariff bill upon a bill of the House laying a duty on peanuts, is entirely to disregard the spirit of the clause of the Constitution before quoted. In reply it may be said, however, that any other construction of this constitutional provision would deny to the Senate the power to amend a House bill laying a duty on peanuts so as to lay a duty upon English walnuts; that is, would deny to the Senate the power of making to the bill anything more than mere formal amendments.

The report then goes on to advance the theory that the framers of the Constitution expected that the Senate would sit in practically continuous session, and that the provision relating to revenue bills was to prevent them taking up that subject while the other House was absent by giving to the other House the origination of such bills.

It is conceded in the report that the Senate can not propose an amendment raising revenue to any bill coming from the House, but only to a bill raising revenue. This brings forward the phrase "raising revenue." The report discusses that phrase as follows:

Suppose the existing law lays a duty of 50 per cent upon iron. A bill repealing such law, and providing that after a certain day the duty upon iron shall be only 40 per cent, is still a bill for raising revenue, because that is the end in contemplation. Less revenue will be raised than under the former law, still it is intended to raise revenue, and such a bill could not constitutionally originate in the Senate, nor could such provisions be ingrafted, by way of amendment, in the Senate upon any House bill which did not provide for raising—that is, collecting—revenue. This bill did not provide that the duty on tea and coffee should be laid at a less rate than formerly, but it provided simply that hereafter no revenue should be raised or collected upon tea or coffee. To say that a bill which provides that no revenue shall be raised is a bill "for raising revenue" is simply a contradiction of terms. * * * To say that a bill which does not provide for raising any revenue must originate in the House because its operation may affect the revenue is not only to say what the Constitution does not say, but is to strip the Senate of jurisdiction it is conceded to possess and which it has exercised at every session of Congress since the Constitution was adopted. A bill creating an office and fixing the salary of the officer affects the Treasury to the extent of such salary, but is not a bill for raising revenue.

After observing that the Constitution intended to restrict the Senate as to bills raising revenue, but not as to bills appropriating money, the report concludes:

Your committee are therefore of opinion that the House bill under consideration was not a bill for raising revenue within the meaning of the Constitution; and therefore, while the Senate might have amended it so as to abolish duties altogether upon other articles, the Senate had no right to ingraft upon it, as it did in substance, an amendment providing that revenue should be collected upon other articles, though at a less rate than previously fixed by law. That amendment would have become a provision in the act for raising revenue, because revenue at a certain rate would have been collected by the operation of the act.

It is due, however, to the Senate to say that its departure from the true principle in this case was owing to a desire to conform to the views of the House of Representatives, as expressed by the House, in relation to the Senate bill abolishing the tax upon incomes, and thus to preserve harmony between the two Houses. But since the House of Representatives, exalting its prerogative, asserts upon one occasion what it denies upon another, it has become necessary to review the question in the light of principle and

seek for a solution of the difficulty in conformity with the Constitution, to which, it is hoped, the House will assent, and to which it is the duty of the Senate to adhere whether the House shall assent or dissent.

The report concludes with no recommendation for action. except that the report be transmitted to the House of Representatives.

1490. In 1874 the House declined to take issue with the Senate over an amendment of that body authorizing certain Government obligations.

It is for the House and not the Speaker to pass on a question relating to the constitutional prerogatives of the House.

On April 14, 1874,[1] the House proceeded to the consideration of the bill of the Senate (S. 617) to fix the amount of United States notes and the circulation of national banks, and for other purposes.

The bill in its first section provided "that the maximum amount of United States notes is hereby fixed at $400,000,000." The second section provided for the issue of forty-six millions in circulation in addition to the circulation already allowed the national banks, etc.

Mr. James A. Garfield, of Ohio, made the point of order that the bill was a charge upon the people, as it provided for issuing a class of obligations, to pay every one of which obligations was by its very terms a charge upon the people. Therefore it was a bill which should not originate in the Senate.

The Speaker[2] said:

> The point, the gentleman from Ohio will observe, is one which the Chair has never ruled upon, because it is not for the Chair to say what the Senate of the United States may or may not properly do. On all points where the House has disagreed from the Senate on matters affecting its privilege and prerogative it has been by vote of the House.

Mr. Garfield thereupon moved that the Clerk be instructed to return the bill to the Senate with the message that the bill did not properly originate in the Senate. And on this question the yeas were 57 and the nays 179. So the House declined to agree to the motion.

1491. In 1883 the House raised, but did not press, a question as to certain Senate amendments relating to the revenue.

A question being raised as to certain revenue amendments of the Senate, it was held in order to refer the constitutional question to the House conferees, in case there should be a conference.

It being alleged that the constitutional prerogatives of the House were invaded by certain Senate amendments to a bill, the question of privilege was raised before the bill came up for consideration.

It is for the House and not the Speaker to decide whether or not the constitutional prerogatives of the House have been invaded.

On February 27, 1883,[3] Mr. Nathaniel J. Hammond, of Georgia, as a question of privilege, submitted this resolution:

> *Resolved,* That the substitute of the Senate to bill (H. R. 5538) entitled "An act to reduce internal-revenue taxation, and for other purposes," under the form of an amendment to the bill of the House

[1] First session Forty-third Congress, Journal, p. 800; Record, pp. 3075, 3076.

[2] James G. Blaine, of Maine, Speaker.

[3] Second session Forty-seventh Congress, Journal, p. 512; Record, pp. 3336, 3337.

(H. R. 5538) entitled "An act to reduce internal-revenue taxation," containing a general revision and repeal of laws imposing both import duties and internal taxes, is in conflict with the true intent and purposes of that clause of the Constitution which requires "all bills for raising revenue shall originate in the House of Representatives," and that therefore said bill so amended do lie upon the table.

And be it further resolved, That the Clerk of the House be, and is hereby, directed to notify the Senate of the passage of the foregoing resolution.

The bill (H. R. 5538) was on the Speaker's table, and the House had agreed to a special order for considering the Senate amendments at a future time.

Mr. William H. Calkins, of Indiana, made the point of order that Mr. Hammond's resolution was not in order either to be offered or considered until the bill to which it referred was brought before the House for consideration.

After debate, the Speaker [1] said:

The resolution offered by the gentleman from Georgia is offered by him for the purpose of raising the question of constitutional privilege, a question involving the constitutional prerogatives of the House in the formation of revenue bills. And in practice this has been always held to be a matter of high privilege. The only question raised now by the point of order of the gentleman from Indiana is as to the matter of time of raising the question, and it is suggested that the bill is not before the House for consideration, and hence that it is too soon to make the point of order raised by the gentleman from Georgia. In argument it is said that the House does not know officially what the bill contains for the purpose of determining this question.

The Chair does not take that view of the matter at all. The bill has been returned to the House by the official direction of the Senate. It goes, under the rules of the House, it is true, to the Speaker's table, but the House has taken notice of it there, has ordered it to be printed, and it is before the House for its action. It is sufficient to say that if the matter was under consideration once in the House, under the rules, in the opinion of the Chair, it would then be too late to raise this question of constitutional privilege against it, so that the House must look to the bill to determine that question before it proceeds to consider it at all. Under the practice, points of order must be made on bills, amendments, etc., before consideration commences, or they are waived, and to make such points of order Members must take notice of the contents of such bill, etc.

If the bill in dispute were brought up before the House and its consideration entered upon, under the practice of the House, it would be then too late to raise the question of constitutionality against it.

The Chair thinks this is a matter for the House to determine, and for the purpose of learning, if the House has not been advised upon the contents of the bill against which the constitutional question is raised, the bill can be read, or so much of it as may be necessary, for the purpose of determining whether it is a bill on which the question of constitutional privilege can properly be raised. It is not for the Chair to decide whether the prerogatives of the House have been invaded or not; it is for the House; and therefore the Chair now thinks that the resolution of the gentleman from Georgia is in order for consideration, and so rules.

One word further. It is said the precedents are against the consideration of such a resolution before the measure is brought before the House for consideration. The Chair has hastily looked to one or two instances with reference to similar resolutions, and finds that one of a similar character was offered by the gentleman from Massachusetts, Mr. Dawes, in April, 1872, which involved a revenue bill, as this does, and the resolution was offered and entertained and considered by the House before the bill was taken up for consideration. * * * Several cases of a similar character to the one before the House have arisen in the history of the Congress of the United States, but only enough of them have been examined to show that the practice has not been uniform.

During consideration of the resolution, Mr. Dudley C. Haskell, of Kansas, offered the following as a substitute: [2]

Whereas House bill No. 5538, entitled "An act to reduce internal-revenue taxation, and for other purposes," under the form of an amendment in the Senate to Title 33 of the Revised Statutes, which

[1] J. Warren Keifer, of Ohio, Speaker.

[2] Journal, p. 513; Record, pp. 3340–3344.

provides for duties on imports, has been so modified and changed by the introduction of new provisions, containing, among other things, a general revision of the statutes referred to so as both to increase and reduce duties on imports, and in many instances to repeal and in others to amend the laws imposing import duties; and,

Whereas in the opinion of this House it is believed that such changes and alterations are in conflict with the true intent and purpose of the Constitution, which requires that all bills for raising revenue shall originate in the House of Representatives: Therefore,

Resolve, That, if this bill shall be referred to a committee of conference, it shall be the duty of the conferees on the part of the House on said committee to consider fully the constitutional objections to said bill as amended by the Senate and herein referred to, and to bring the same, together with the opinion of the House in regard thereto, before said committee of conference, and if necessary, in their opinion, after having conferred with the Senate conferees, said conferees on said committee may make report to the House in regard to the objections to the said bill herein referred to.

Mr. John G. Carlisle, of Kentucky, made the point of order against the proposed substitute, for the reason that it not only proposed to submit the question of constitutional privilege of the House to such conference, but also to consider the subject-matter of such Senate amendment.

During the debate which followed, other points were urged: By Mr. Nathaniel J. Hammond, of Georgia, that the proposition was to instruct conferees in advance of a disagreement and in advance of a declaration by the House that its privileges had been violated; by Mr. Joseph S. C. Blackburn, of Kentucky, that it was proposed to give to the committee of conference a double power and duty, relating both to the constitutional prerogative and to the bill; by Mr. Edward S. Bragg, of Wisconsin, that it was not in order to refer an undisputed question of privilege to a committee composed in part of Members of the other branch.

The Speaker said:

The Chair may say in answer, so far as it is necessary to answer the question made by the gentleman from Wisconsin, Mr. Bragg, and it is necessary to do it only so far as affects this question, that it is quite competent on presenting a matter which is clearly in opposition to the action of the Senate, and in the first instance, to declare a disagreement and ask for a conference.

The Chair is perfectly well satisfied that the proposed substitute would not be in order if it undertook to do anything more in the first instance than to provide for a disagreement with the Senate on the constitutional right of the House or of the two Houses, and then to refer that disagreement and other subjects connected with the bill to a committee of conference.

Committees of conference are not appointed, as has been suggested, by virtue of joint rules of the two Houses, because, as the Chair understands, there have been no joint rules of the two Houses recognized by either House for a number of years. Committees of conference have grown up in practice; either House may ask a conference on any matter of disagreement. The Chair does not think that upon a matter about which there is no disagreement, and none proposed by the action of the House with the Senate, a conference could properly be asked for. Nor does the Chair think that under the guise of providing for a conference other rules of the House may be overridden. If this resolution is subject to the construction that it sends the bill to the conference committee, in case the Senate should agree to it, then it would have to be held that under the right to provide for a committee of conference we could override our rules in reference to the manner of proceeding to business on the Speaker's table, and we could override Rule XX,[1] which requires that a Senate amendment to a revenue or appropriation bill shall be first considered in Committee of the Whole on the state of the Union, and, without declaring a disagreement in the Senate amendment, send it directly to a committee of conference. If this proposed substitute would do that, the Chair would hold it to be not in order.

But before coming to consider what the plain meaning of the language is, the Chair desires to call attention to the precedent, as it is claimed, which arose in March, 1859. On an examination of that

[1] See section 4796 of Vol. IV of this work.

case, which involved the constitutional right of the Senate to originate a post-office appropriation bill,[1] it will be found that a resolution very similar, certainly in effect, to the proposed substitute was adopted in the House by a very large vote, and a conference was agreed to by the Senate. The conferees on the part of the two Houses met and considered only, as the Globe of that time will show, the question of constitutional difference between the two Houses, and reported upon that. Without undertaking to settle the question one way or the other, the conference committee made a report declaring in effect that neither House receded from its position on the subject, and then, as it was the day before the expiration of the Congress, recommended in the latter clause of the report that each House should waive any constitutional right which they respectively considered to belong to them and that the House should pass the bill which was brought to the House.

The history of those proceedings shows, however, that after this bill was brought to the House it was not treated at all as a bill brought there by the conference committee. Mr. Letcher, of Virginia, a member of the conference committee on the part of the House, after the report was received and before it was acted upon, obtained unanimous consent to introduce the precise bill which was recommended by the committee of conference. It was introduced by unanimous consent, read a first and second time as an original bill, and subsequently that bill passed as a House bill upon a suspension of the rules. It was not treated as any matter offered to the House properly by the committee of conference. The committee of conference certainly transcended to some extent its duties by recommending the House to take up a bill, that subject not having been referred to the committee; but it was a mode of getting out of the difficulty and saving an appropriation bill in the expiring hours of Congress. Thus in this particular case we find a precedent only for a resolution of the House referring the constitutional question to a committee of conference, the House having first declared its opinion that the Senate had not the right to originate the particular bill.

Now, a fair reading of this proposed substitute leads the Chair to hold that it provides only for referring to a conference committee the constitutional objections to the bill, such as grow out of the alleged violation of the Constitution by the Senate of the United States in passing an impost bill as a part of or an amendment to an internal revenue bill of the House. The second clause of the preamble clearly provides for a disagreement with the Senate upon this constitutional question. The Chair, giving this substitute the construction it has indicated, holds that the substitute is in order, and therefore overrules the point of order made by the gentle-an from Kentucky.

Mr. Hammond, of Georgia, having appealed, the appeal was laid on the table on motion of Mr. Thomas B. Reed, of Maine.

The substitute was adopted[2]—yeas 144, nays 120—and then the resolution as amended by the substitute was agreed to-yeas 139, nays 122.

When the conferees reported on the bill no mention of the constitutional question was made in the report,[3] and the bill with the Senate amendments became a law.

1492. Instance wherein a Senate amendment affecting the revenue was not objected to until the stage of conference.—On March 1, 1905,[4] in the Senate, the post-office appropriation bill was under consideration, when this amendment was agreed to without any debate as to whether or not it affected the revenue:

SEC. 3 [2]. That hereafter the rate of postage on packages of books or merchandise mailed at the distributing post-office of any rural free delivery to a patron on said route shall be 3 cents for each pound or any fraction thereof. This rate shall apply only to packages deposited at the local post-office for delivery to patrons on routes emanating from that office, or collected by rural carriers for delivery to the office from which the route emanates, and not to mail transmitted from one office to another, and shall not apply to packages exceeding 5 pounds in weight.

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[1] This is hardly accurate. The Senate had placed on the post-office appropriation bill passed by the House an amendment raising the rate of postage. See section 1485 of this chapter.

[2] Journal, pp. 513, 515; Record, pp. 3349, 3350.

[3] Journal, p. 568; Record, p. 3710.

[4] Third session Fifty-eighth Congress, Record, p. 3733.

On the same day,[1] the bill having been received in the House, all the amendments of the Senate were disagreed to,[2] and a conference was asked, Messrs. Jesse Overstreet, of Indiana, John J. Gardner, of New Jersey, and John A. Moon, of Tennessee, being conferees.

On March 1[3] the Senate agreed to the conference.

On March 3[4] the conference report was presented and agreed to, with the above amendment of the Senate disagreed to.

1493. The Senate having added a revenue amendment to an appropriation bill, the House returned the bill to the Senate, which reconsidered and struck out the amendment.—On February 16, 1905,[5] Mr. Sereno E. Payne, of New York, chairman of the Ways and Means Committee, rising to a question of privilege, offered for immediate consideration the following:

Resolved, That the amendment No. 208, added by the Senate to the House bill H. R. 18329, in the opinion of this House contravenes the first clause of the seventh section of the first article of the Constitution of the United States, and is an infringement of the privileges of this House, and that the said bill, with the amendments, be respectfully returned to the Senate with a message communicating this resolution.

Mr. Payne said:

Mr. Speaker, the bill in question is the annual agricultural appropriation bill. The amendment is in these words:

"That paragraph 234 of the act of July 24, 1897, entitled 'An act to provide revenue for the Government and encourage the industries of the United States,' shall not be held to be affected by the provisions of section 30 of said act."

Paragraph 234 of the tariff bill referred to provides for a duty of 25 cents a bushel on wheat imported into the United States. Section 30 provides for a drawback of 99 per cent of the tariff paid on imported articles which enter into the manufacture of articles afterwards exported from the United States. In other words, the amendment abolishes the drawback clause in the Dingley bill on wheat imported into the United States and afterwards manufactured into flour and exported.

Now, I do not intend to discuss at all the merits of this amendment. Whether it is wise or otherwise is a question not to be considered. The important question is whether that clause of the Constitution of the United States which declares that all bills for raising revenue shall originate in the House of Representatives shall be cherished as one of the privileges handed down to us by the Constitution of the United States, and whether we will resent any infringement from any source of that clause of the Constitution of the United States. [Applause.] Mr. Speaker, as the Members know, this is no new question in the House of Representatives, and the House has uniformly insisted on its right guaranteed to it by this clause of the Constitution of the United States, and the Senate has frequently conceded it. In 1831, February 11, in the Senate, Mr. Thomas H. Benton asked leave to introduce a bill for the gradual abolition of the duty on alum salt. This bill was opposed on two grounds, the latter ground because it belonged to a claw of revenue bills which the Senate did not have the right to originate. After debate, leave to introduce the bill was refused—yeas 17, nays 27—and in that case the Senate affirmed the right of the House.

On June 30, 1864, Mr. Thaddeus Stevens introduced a resolution, and the resolution which I have offered to-day is substantially a copy of the one introduced by Mr. Stevens, in regard to the bill to regulate and provide for enrolling and calling out of the national forces, which had been returned from

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[1] Record, p. 3808.

[2] The constitutional question was not raised in the House because of lack of time, and because of the belief that under the circumstances it would be better to give the Senate conferees an opportunity to recede.

[3] Record, p. 3757.

[4] Record, pp. 3979–3982.

[5] Third session Fifty-eighth Congress, Record, pp. 2730–2736.

the Senate with amendments, one of which provided for a 5 per cent duty on all incomes to meet the cost of paying bounties and enforcing the draft. Mr. Stevens said:

"It is so clearly a violation of the privilege of the House that I think it ought not for a moment to be acquiesced in."

Without further debate the House agreed to the resolution. The same day a message from the Senate announced that the Senate, on reconsideration, had again passed the bill with all amendments previously concurred in, except the amendment objected to by the House of Representatives.

In April, 1872, Mr. Dawes, of Massachusetts, reported a resolution in substance as follows:

"Resolved, That the substitution by the Senate, under the form of an amendment, for the bill of the House (H. R. 1537) entitled 'An act to repeal existing duties on tea and coffee' of a bill entitled 'An act to reduce existing taxes,' containing a general revision, reduction, and repeal of laws imposing import duties and internal taxes, is in conflict with the true intent and purpose of that clause of the Constitution which requires that all bills for raising revenue shall originate in the House of Representatives, and that therefore said substitute for House bill No. 1537 do lie upon the table—" and also directing the Clerk to notify the Senate of the passage of the resolution.

The House will notice that the original bill sent from the House of Representatives provided for the abolition of the duty on tea and coffee. It was a bill in relation to the revenue; but the House believed that it was not a bill raising revenue in the sense expressed by the Constitution of the United States, and therefore that the Senate, under their general power of amendment to bills raising revenues, could not incorporate a general tariff bill as a substitute for this bill of the House. This resolution gave rise to an important debate, in which any gentlemen indulged, some of whom have since become Senators and now are in the Senate of the United States, and all of whom took grounds that this bill was an infringement of the constitutional right of the House. Mr. James A. Garfield reviewed the English usage, the circumstances attending the adoption of the clause in the Constitution of the United States, and cited many precedents of Congress. For instance, in the House on June 25, 1789 (First Congress, Annals, vol. 1, pp. 592, 593, 597, 603, 605, 607), the First Congress, Madison, Livermore, Gerry, Lawrence, and Tucker contended that the sole right of originating money bills belonged in the House—this was on an appropriation bill—but that this clause covered also all appropriation bills, because an appropriation bill was an appropriation of the moneys raised by the revenue powers of the Government, and therefore was included; and since that time, as we all know, the appropriation bills of the Government—the supply bills—have originated uniformly in the House of Representatives, with perhaps a single exception, which I will note later, and which failed to become law.

Also in the Senate in 1833 (Twenty-second Congress, Debates, vol. 9, pt. 1, pp. 462, 473, 477, 478, 722), where the tariff bill introduced by Mr. Clay was discussed and tabled, Messrs. Webster, Clay, Dickerson, and Forsythe denied the right of the Senate to originate a revenue bill. In the House in 1837 (Twenty-seventh Congress, Debates, vol. 14, pt. 1, pp. 1152, 1153, 522), where a Senate bill authorizing the issue of Treasury notes was, on September 30, discussed in Committee of the Whole and considered an invasion of the prerogatives of the House. As a result of the discussion, the Senate bill was laid aside and a House bill on the game subject passed. This latter bill passed the Senate. In the Senate in 1842–3 (Twenty-eighth Congress) where, on January 19 to May 31, 1843, Mr. McDuffie's bill to revise the compromise tariff of 1833 was debated and by a vote of yeas 33, nays 4, was decided to be such a bill as could not originate in the Senate. In the Senate in 1855 (Thirty-fourth Congress, Globe, January, 1856, pp. 160, 161, 162, 375, 376), where the Senate, in opposition to the influence of Messrs. Seward and Sumner, originated two general appropriation bills, which were afterwards tabled by the House.

The resolution was agreed to by a vote of yeas 163, nays 9. The resolution was referred to the Committee on Privileges and Elections, and an exhaustive report was made by Mr. Matthew H. Carpenter, of Wisconsin. The following is the concluding clause of the report:

"Your committee are therefore of opinion that the House bill under consideration was not a bill for raising revenue within the meaning of the Constitution; and, therefore, while the Senate might have amended it so as to abolish duties altogether upon other articles, the Senate had no right to engraft upon it, as it did in substance, an amendment providing that revenue should be collected upon other articles, though at a less rate than previously fixed by law. That amendment would have become a provision in the act for raising revenue, because revenue at a certain rate would have been collected by the operation of the act."

On June 14, 1878, Mr. Joseph G. Cannon, of Illinois, as a question of privilege, offered a resolution returning a bill to establish post routes, originating in the House of Representatives, reciting:

"That the amendments thereto be returned to the Senate, as a portion of said amendments are in the nature of and constitute a revenue bill."

The amendments complained of gave the franking privilege to Members of Congress, reduced the rate on second-class mail from 3 to 2 cents a pound, adding a provision for a tax of $1 upon the publisher of a foreign newspaper before he should be permitted to use the mails to send his paper at the 2-cent rate, etc. Another provision relieved the railroads of certain duties in regard to delivering the mails. The resolution was agreed to, yeas 169, nays 68. The Senate appointed a committee of conference to confer with a like committee on the part of the House touching the matters of difference between the two Houses indicated by said House resolution. The House appointed a like committee and each committee reported to their respective Houses that they were unable to agree. The attempt to reconcile the two Houses failed and the bill failed. The House subsequently passed a bill without the objectionable amendments, and that was not passed in the Senate.

On March 3, 1859, Mr. Galusha A. Grow introduced a similar resolution in regard to the post-office appropriation bill, that the same be returned to the Senate, as section 13 of said amendments is in the nature of a revenue measure. That resolution was agreed to in the House and the bill finally failed. Similar action was taken January 27, 1871, in the House, on motion of Mr. Samuel Hooper, of Massachusetts. * * *

Mr. Allison was then a Member of the House. On February 23, 1830, in the Senate, Mr. Thomas H. Benton proposed a bill to provide for the abolition of unnecessary duties, etc. One section of this bill proposed to increase the duties on certain articles, and the question arose as to the constitutional power of the Senate to originate such a measure. After discussion, Mr. Benton withdrew the bill.

There was also a report made in the Forty-eighth Congress by Mr. Randolph Tucker, of Virginia, on the question of changing revenues under the treaty-making, power of the Constitution. It was a lengthy, able, and exhaustive report, written by one of the ablest lawyers whom it has been my privilege to meet during my service in this House, and it showed most conclusively the exclusive power of the House of Representatives to originate revenue bills. I believe that in all the history of the treaty-making of the United States, a question in respect to or touching upon the question of revenue, or where appropriation has been required to carry out the effect of the treaty, it has been the uniform practice, with a single exception, to submit those treaties and those matters to the House of Representatives; and the treaties have not gone into effect until the House of Representatives have joined in the proper legislation to change the revenue or to make the appropriation.

Now, Mr. Speaker, I might cite other precedents. They are numerous, and they are all to the same effect. Our predecessors have held inviolate the right of the House of Representatives to originate revenue bills. It is guaranteed to us by the Constitution. It is higher than any question that can arise in regard to tariff or to tariff change. It is higher than a question of duty on wheat or duty on any other of the four thousand articles that are covered by a revenue measure. It is the sacred right left us by the framers of the Constitution as representing the people, as coming from the body of the people, and as being nearer to the people than the other body, to originate these bills, and none of them can be originated and none should be originated, and none will be originated in the other body if the House of Representatives stand by their right and by their privileges as guaranteed by the Constitution of the United States.

After further debate the resolution was agreed to, yeas 263, nays 5.

On February 17,[1] in the Senate, the message from the House was considered. Mr. Henry C. Hansbrough, of North Dakota, said:

Here, Mr. President, is another question that has never been judicially determined. In the only case that I am able to find which reached the Supreme Court touching the power granted by section 7, Article I, of the Constitution, the court say:

"The case is not one that requires either an extended examination of precedents or a full discussion as to the meaning of the words in the Constitution—'bills for raising revenue.' What bills belong to that class is a question of such magnitude and importance that it is the part of wisdom not to attempt by any general statement to cover every possible phase of the subject." (167 U. S., 202.)

[1] Record, pp. 2766–2770.

Mr. Joseph B. Foraker, of Ohio, said:

I do not believe the position taken by the House in this matter is a correct one. That is to say, I do not believe the constitutional provision that bills for raising revenue shall originate in the House precludes the Senate from originating measures that merely affect the revenue, certainly when they affect reductions in the revenue, or when they affect, as here, the revenue only by providing for a construction of a law that is in force, as I understand this amendment does, governing the disbursement of revenues already raised by paying out the same for drawbacks. This is no time, with the pressure we are all working under, to enter upon a discussion of this very important subject, but this is a question that will arise from time to time in connection with the questions that are arising about tariff between this country and our insular possessions, and sooner or later we must discuss it.

I wish to take advantage of this opportunity to say that I assent because of the peculiar conditions surrounding it, but at the proper time I hope to be able to address the Senate upon the proposition I have tried to enunciate, namely, that the constitutional provision does not prohibit us from legislating so as to reduce revenue or to construe a statute that is in force in the way we proposed by this amendment.

Mr. John T. Morgan, of Alabama, said:

Mr. President, I think that the House in sending this resolution here, although it is couched in very respectful terms, has entirely transcended its authority under the Constitution. The House has no right to return to the Senate a proposition of any kind upon the ground that the action of the Senate was unconstitutional. It might ask a conference upon it with great propriety, and have the judgment of both Houses taken upon the constitutionality of that provision.

I maintain, Mr. President, that the action of the Senate in the passage of this amendment to the agricultural appropriation bill was altogether right and constitutional. The House has been in the habit of sending us bills called "bills of revenue," or "bills to raise revenue," or "tariff bills," or "tax bills," internal and external, or "customs bills," accompanied with provisions such as the one contained herein upon which the objection in this case rested, as follows "An act to provide revenue for the Government and to encourage the industries of the United States."

That is the title of the act in which we find the provision that it is now said we are trying to change in an unconstitutional way. The title of that act indicates very clearly its purposes, being twofold and, as I contend, entirely distinct. One is to raise revenue and the other is to encourage industries. When a bill is enacted into law for that purpose there can be no doubt that two propositions are contained in it. One is the revenue proposition and the other is the proposition to encourage industries.

It so happens that the tariff on wheat—25 cents a bushel—is a revenue measure, and that we have no right to change perhaps by a bill originating in the Senate. But the corresponding or correlative proposition of refunding 99 per cent of that tariff, when it is received upon wheat that is brought in, and the tariff has been paid to the Government, when it is exported to foreign countries, is simply a proposition for the encouragement of manufactures. That is not a revenue proposition. It is giving away the revenue after it has been paid into the Treasury. It gives it back to the miller if he grinds the wheat bought from a foreign country and imported into the United States and exports it for sale and for consumption abroad.

Now, there is a distinct proposition which encourages the miller at the expense of the wheat grower. That is a matter which ought to be rectified, if it can be done; and the Senate of the United States has just as much right to act upon that proposition as the House has. We do not disturb the 25 cents a bushel tariff on wheat. We merely say the giving back of that 25 cents, or of 99 per cent of it, to the mill owner is a matter we have a right to deal with. That is the encouragement of industry, and solely that. You can not say that you are raising revenue when you give 99 cents out of the dollar back to anybody as a condition of trade. That feature of the case is not the raising of revenue; it is the giving away of money from the Treasury of the United States to encourage manufactures.

Just as long as the House sends us bills that contain these distinct propositions and so announces in the title of the act itself, I feel entirely at liberty, under my view of the Constitution of the United States, to vote upon propositions to strike out so much of the express provisions of a bill as is intended merely to encourage manufactures without affecting in the slightest degree the tariffs or the revenues of the country.

Mr. John C. Spooner, of Wisconsin, said:

Mr. President, I wish to say a word, and only a word, about this matter. I never supposed when the act was passed that the drawback clause included wheat and some other items. But I can not agree with the Senator from Alabama, and I do not quite agree with the Senator from Ohio, although I do not care to enter into a discussion of the question. I think the clause of the Constitution which says "all bills for raising revenue shall originate in the House of Representatives" uses the word "raising" in a generic sense. I do not think it means simply raising duties. Oftentimes revenue is raised by lowering duties. I think it means, in a strict sense, affecting revenue. * * * Concerning revenue. The Constitution does certainly confer upon the House by that clause an exclusive right, so far as this class of measures is concerned. Tariff bills can not originate in the Senate. That is an impossibility.

This is an agricultural appropriation bill. There was not an item in it which dealt with the revenue, and I think it was entirely without the right of the Senate to include in it the amendment to which the House objects. As construed it amounted to free wheat for export. Whether the Attorney-General has correctly construed the law or not is a question of opinion. He has construed it one way, as Attorney-General Olney construed it the other way. Attorney-General Griggs and Attorney-General Moody construed it differently from the construction placed upon it by Attorney-General Olney.

It is not the function of Congress to construe acts of Congress. That is the function of the judicial department of the Government. Congress and legislatures may pass acts of legislative construction, but they are operative only to change the law from the passage of the legislative act of construction; they are not retroactive so as to bind as to the past.

So this proposition which has passed here absolutely changes the law. It is not simply a matter of construction, but it says: "That paragraph 234 of the act of July 24, 1897, entitled, etc., shall not be held to be affected by the provisions of section 30 of said act."

Section 30 being the general drawback section.

I think, Mr. President, the House was not called upon to nonconcur in the amendment and ask, as in ordinary cases, for a conference. That would have admitted the right of the Senate to incorporate the amendment. If the Senate might make this amendment it is difficult to limit the power of the Senate in incorporating amendments which affect the revenue. * * * I think the House of Representatives, in a very respectful and dignified way, has called our attention to a real invasion of its constitutional privilege and that the Senate is proceeding to do in a dignified and proper way what it ought to do in eliminating this amendment from the bill.

On motion of Mr. Spooner the passage and engrossment of the bill was reconsidered and the objectionable amendment was disagreed to. The bill was then engrossed, read a third tune, and passed; and then returned to the House of Representatives.

1494. The Senate having passed a bill with incidental provisions relating to revenue, the House returned the bill, holding it to be an invasion of prerogative.

Arguments in the Senate as to the limits of the prerogatives of the House in relation to revenue legislation.

On December 14, 1905,[1] in the Senate, Mr. Nelson W. Aldrich, of Rhode Island, from the Committee on Finance, reported the bill (S. 1475) supplemental to an act entitled "An act to provide for the construction of a canal connecting the waters of the Atlantic and Pacific oceans," approved June 28, 1902, and making appropriation for isthmian canal construction, and for other purposes, with an amendment striking out all after the enacting clause and inserting the following:

That the 2 per cent bonds of the United States authorized by section 8 of the act entitled "An act to provide for the construction of a canal connecting the waters of the Atlantic and Pacific oceans," approved

[1] First session Fifty-ninth Congress, Record, p. 383.

June 28, 1902, shall have all the rights and privileges accorded by law to other 2 per cent bonds of the United States, and every national banking association having on deposit, as provided by law, such bonds issued under the provisions of said section 8 of said act approved June 28, 1902, to secure its circulating notes, shall pay to the Treasurer of the United States, in the months of January and July, a tax of one-fourth of 1 per cent each half year upon the average amount of such of its notes in circulation as are based upon the deposit of said 2 per cent bonds: and such taxes shall be in lieu of existing taxes on its notes in circulation imposed by section 5214 of the Revised Statutes.

The amendment was agreed to and the bill as amended was passed. The question as to the right of the Senate to originate revenue legislation was not introduced in the debate.

On the next day, December 15,[1] the bill was sent to the House by message from the Senate, and went to the Speaker's table. Soon thereafter Mr. Sereno E. Payne, of New York, called attention to the fact that the revenue provision of the bill constituted an infringement on the constitutional prerogatives of the House, referred to the summary of precedents given in the preceding Congress in a similar case, and proposed the following resolution, which was agreed to unanimously by the House:

Resolved, That the bill S. 1475, in the opinion of the House, contravenes the first clause of the seventh section of the first article of the Constitution, and is an infringement of the privileges of this House, and that the said bill be taken from the Speaker's table and be respectfully returned to the Senate with a message communicating this resolution.

On the same day[2] the action of the House was transmitted by message to the Senate.

Before the bill (S. 1475) was reported or acted on by the Senate, the House had sent to the Senate a bill (H. R. 480) supplemental to an act entitled "An act to provide for the construction of a canal connecting the waters of the Atlantic and Pacific oceans," approved June 28, 1902, and making appropriation for isthmian canal construction, and for other purposes. This House bill had contained, among other provisions, one similar to the provision of the bill S. 1475. The Senate had stricken the provision from the House bill, having embodied it in somewhat different form in their own bill. The House having disagreed to the Senate amendments to the House bill, the difference was committed to a conference, who reported on December 19, 1905.[3] This conference report, which was agreed to in both Houses on the day of its presentation, restored the provision originally embodied in the House bill, but did so not in the original House language, but in the language of the bill S. 1475.

While the conference report was under consideration in the Senate, Mr. Nelson W. Aldrich, of Rhode Island, said[4] that, in his opinion, the bill S. 1475 was not a revenue measure:

The section, as it came from the House, and as it is proposed to be adopted in the conference report, is an amendment of section 13 of the refunding act of March, 1900, which originated in the Senate and was sent to the other House, where it was received and passed without the constitutional question having been raised. All the provisions of the refunding act were placed in the bill by the Senate, and to this there was no objection. Other important measures affecting taxation of banks have originated in the Senate without protest.

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[1] Record, p. 452.

[2] Record, p. 432.

[3] Record, pp. 581–585.

[4] Record, p. 581.

Last year, when the isthmian canal bill, so-called, was before the Senate, a similar provision to that now in controversy was inserted in that bill at the suggestion of the Finance Committee. That bill went to the other House and no constitutional objection was raised. By the rules of the House of Representatives all revenue bills—all bills relating to or affecting revenue—are referred to the Committee on Ways and Means. All bills relating to the taxation of national banks have been uniformly referred to the Committee on Banking and Currency, showing very dearly that the House itself in its practice has not held bills of this nature to be revenue bills. In the very last session—and I suppose I am at liberty to speak of what occurred in that House as shown by the public records—a bill was introduced by a Member from Connecticut [Mr. Hill] containing substantially the same provisions that are now incorporated in this first section. That bill was referred by the action of the House to the Committee on Banking and Currency; it was reported back by the Committee on Banking and Currency with additional provisions as to the taxation of national banks; it was taken up for consideration without a question being raised as to its charter; taken up without any claim that it was entitled to the privileges of a revenue bill; and it was discussed for weeks. No point was ever raised as to the jurisdiction of the Committee on Banking and Currency, nor was there any claim or suggestion on the part of anybody that the bill was a revenue bill. The claim is now made for the first time that the prerogatives of the House are invaded by legislation of this kind.

Mr. John C. Spooner, of Wisconsin, argued [1] more elaborately in the same line:

If the House of Representatives is correct in its view that the bill is a bill "for raising revenue," within the meaning of section 7 of Article I of the Constitution, certainly the bill is properly returned and must rest here. If the House of Representatives is wrong, the Senate has no right to yield its jurisdiction. No department of the government has any right to surrender any portion of the power or responsibility with which the Constitution has clothed it. It is vital, both as to the National Government and to the State governments, that the line of demarcation drawn by the framers of the Constitution of the United States and of the various States between the three independent and coordinate branches of the Government shall be observed always with the utmost strictness, to the end that neither shall, in the slightest degree, invade the other. * * * Assertion was made in the House, in advocacy of the resolution for the return of the bill, that at the last session the Senate invaded the prerogative of the House and upon its being resented had receded. In my judgment, at the last session of Congress the Senate transcended its rights under the Constitution and invaded the prerogative of the House. That was in the amendment to the agricultural appropriation bill by which the Senate enacted a construction of the tariff act in its relation to drawbacks. The Secretary of the Treasury had construed the drawback clause as including wheat and was admitting it free of duty. That was a question of construction. The Senate adopted an amendment to the appropriation bill declaring the drawback provisions not to include wheat.

It is not the function of legislatures to construe the laws. That is a judicial function. It may be persuasive in the court, but it is not binding upon the court; and where such an act is passed and the court is of opinion, as to past transactions, that the legislative construction is not the sound one, it stands by the judicial construction, but from the passage of the construing act it works a change in the law. Therefore the House rightly objected, in my opinion, to the amendment by the Senate to the tariff act, and the Senate did only its duty in receding from the proposition. But there is no similarity whatever between that amendment and the action here complained of.

But, Mr. President, if the House of Representatives, 357 of whose Members voted for this resolution challenging the power of the Senate-rising to make it more solemn—is right, then the Senate is deprived of a legislative jurisdiction which from the foundation of the Government it has exercised, and it is weakened in its legislative power to the detriment of the public interest. Now a word as to the obvious purpose of the bill which has been returned unconsidered. I apprehend that very few will be found to characterize it as a "tax bill." Certainly from a constitutional standpoint it is not a "bill for raising revenue."

What is its manifest object?

Under existing law the 2 per cent canal bonds heretofore authorized could, when issued, be used as a basis for national-bank circulation. Under existing law the tax upon that circulation would be 1 per cent. The law which is made by this bill to apply to the canal bonds relates to 2 per cent bonds, and

[1] Record, pp. 581–584.

to encourage their purpose and use as a basis for bank circulation reduces the tax from 1 per cent to one-half of 1 per cent. So the bill which was returned to us was simply a bill bringing these 2 per cent canal bonds upon the same basis in respect of taxation with all 2 per cent bonds of the Government.

Is it possible, Mr. President, that it can with reason be said that the object of this bill is to "raise revenue" for the support of the Government?

The question is this: Is the bill, which was introduced as a separate proposition by the Senator from Colorado [Mr. Teller], and which the Senate passed, a revenue bill within the meaning of section 7 of the first article of the Constitution?

"All bills for raising revenue shall originate in the House of Representatives."

This brings us to the question: What is a "revenue bill" within the meaning of the Constitution?

The definition is well settled, thus:

"Revenue laws: Laws made for the direct and avowed purpose of creating and securing revenue or public funds for the service of the Government." (Anderson's Law Dictionary, p. 899.)

This embraces clearly all bills passed in the exercise of the taxing power, whether in the form of customs duties or internal-revenue taxation, for the purpose of raising money for the support of the Government.

This definition excludes, and the constitutional provision was intended to exclude, bills passed in the exercise of constitutional powers other than the taxing power, even if they operated to raise revenue, or even if they imposed incidentally a tax or taxes to secure the more efficient and successful exercise of the power.

Such bills or laws have never been, either in practice or judicially, deemed "revenue" bills or laws.

Congress enacts laws from time to time which operate to raise revenue. The post-office laws operate to raise revenue. Congress frequently changes the post-office laws so as to raise more revenue. But it has not been contended for many years—it was once—that those were revenue bills within the meaning of this clause of the Constitution.

The power to create national banks is a power which exists in Congress. It is not the sole prerogative of either House. It is not the taxing power. It is legislation which Congress may enact under the money power; and the Supreme Court of the United States has so decided. The taxation imposed from the beginning upon the circulation of national banks is purely incidental to the exercise by the Congress, in creating national banks, in supplying the people with the circulation of national banks, of a distinct power vested by the Constitution in either House. * * *

Mr. President, the definition of "revenue laws" which I read to the Senate is taken from Mr. Justice Story (see United States *v.* Mayo, 1 Gall, 398, and Story on Constitution, sec. 880), and the Supreme Court, in the case of United States *v.* Norton, 91 United States, 568, had occasion to consider carefully the question as to what is meant by the phrase "revenue bill," or what the word "revenue" as used in section 7 of Article 1 of the Constitution means. This was a post-office money-order case. It was a criminal case, but the court was obliged in deciding it to pass upon the question whether it was a "revenue law" or not, because, as it determined that it was or that it was not, the law, it was claimed, would be valid or invalid. They say:

"In no just view, we think, can the statute in question be deemed a revenue law.

"The lexical definition of the term 'revenue' is very comprehensive. It is thus given by Webster: 'The income of a nation, derived from its taxes, duties, or other sources, for the payment of the national expenses.'

"The phrase 'other sources' would include the proceeds of the public lands, those arising from the sale of public securities, the receipts of the Patent Office in excess of its expenditures, and those of the Post-Office Department, when there should be such excess, as there was for a time in the early history of the Government. Indeed the phrase would apply in all cases of such excess. In some of them the result might fluctuate, there being excess at one time and deficiency at another.

"It is a matter of common knowledge that the appellative 'revenue laws' is never applied to the statutes involved in these classes of cases.

"The Constitution of the United States, Article 1, section 7, provides that 'all bills for raising revenue shall originate in the House of Representatives.'

"The construction of this limitation is practically well settled by the uniform action of Congress. According to that construction it 'has been confined to bills to levy taxes in the strict sense of the words, and has not been understood to extend to bills for other purposes which incidentally create revenue.'

(Story on the Constitution, sec. 880.) 'Bills for raising revenue' when enacted into laws become revenue laws. Congress was a constitutional body sitting under the Constitution. It was, of course, familiar with the phrase 'bills for raising revenue' as used in that instrument and the construction which had been given it.

"The precise question before us"—

That is, as to what was meant by a "revenue bill" under this clause of the Constitution—"came under the consideration of Mr. Justice Story, in the United States *v.* Mayo (1 Gall., 396). He held that the phrase 'revenue laws,' as used in the act of 1804, meant such laws 'as are made for the direct and avowed purpose of creating revenue or public funds for the service of the Government.' The same doctrine was reaffirmed by that eminent judge in the United States *v.* Cushman, 426."

These views commend themselves to our judgment.

Here is an interesting and original discussion of the question, and I will take but a moment with it before I bring to the attention of the Senate a decision by the Supreme Court of the United States declaring this very section involved between the Senate and the House not to be a revenue bill within that clause of the Constitution invoked by the House. I read from the case of the United States on the relation of Oran C. Michels *v.* Thomas L. James, postmaster of the city of New York, 13 Blatchford's Circuit Court Reports, 207. After quoting the clause, "All bills for raising revenue shall originate in the House of Representatives," the court says:

"Certain legislative measures are unmistakably bills for raising revenue. These impose taxes upon the people, either directly or indirectly, or lay duties, imposts, or excises for the use of the Government, and give to the persons from whom the money is exacted no equivalent in return, unless in the enjoyment, in common with the rest of the citizens, of the benefit of good government."

That is a well thought out distinction and definition.

"It is this feature which characterizes bills for raising revenue"—

Taxes levied throughout the United States upon all coming within the purview of the act to raise revenue for the general uses of the Government and all of the people—

"It is this feature which characterizes bills for raising revenue. They draw money from the citizen; they give no direct equivalent in return. In respect to such bills it was reasonable that the immediate representatives of the taxpayers should alone have the power to originate them. Their immediate responsibility to their constituents and their jealous regard for the pecuniary interests of the people, it was supposed, would render them especially watchful in the protection of those whom they represented. But the reason fails in respect to bills of a different class. A bill regulating postal rates for postal service provides an equivalent for the money which the citizen may choose voluntarily to pay. He gets the fixed service for the fixed rate, or he lets it alone, as he pleases and as his own interests dictate. Revenue, beyond its cost, may or may not be derived from the service and the pay received for it, but it is only a very strained construction which would regard a bill establishing rates of postage as a bill for raising revenue, within the meaning of the Constitution. This broad distinction existing in fact between the two kinds of bills, it is obviously a just construction to confine the terms of the Constitution to the case which they plainly designate. To strain those terms beyond their primary and obvious meaning, and thus to introduce a precedent for that sort of construction, would work a great public mischief. Mr. Justice Story, in his Commentaries on the Constitution (sec. 880), puts the same construction upon the language in question, and gives his reasons for the views he sustains, which are able and convincing. In Tucker's Blackstone only, so far as authorities have been referred to, is found the opinion that a bill for establishing the post-office operates as a revenue law. But this opinion, although put forth at an early day, has never obtained any general approval; but both legislative practice and general consent have concurred in the other view."

Mr. President, I now ask the attention of the Senate to the case of Twin City Bank *v.* Nebeker, 167 U.S., 196, which is upon the precise question, and is unanimous and conclusive. I will take the time to read a portion of the statement of the case in order that Senators may see how controlling is the decision. In this case the plaintiff bank brought suit against Nebeker, then Treasurer of the United States, "to recover from the defendant in error the sum of $73.08, alleged to have been paid by the former under protest to the latter, who was at the time Treasurer of the United States, in order to procure the release of certain bonds, the property of the bank, which bonds, the declaration alleged, were illegally and wrongfully withheld from the plaintiff by the defendant. The plaintiff went into liquidation"—that is, the bank—"in the manner provided by law, on the 23d of June, 1891, and on the 25th of August,

1891, deposited in the Treasury of the United States lawful money to redeem its outstanding notes, as required by section 5222 of the Revised Statutes of the United States. After making such deposit the bank demanded the bonds which had been deposited by it to secure its circulating notes, and of which defendant had possession as Treasurer of the United States. The defendant refused to deliver them unless the bank would make a return of the average amount of its notes in circulation for the period from January 1, 1891, to the date when the deposit of money was made—viz, the 25th of August—1891and—pay a tax thereon. The bank then made a return of the average amount of its notes in circulation for the period from January 1 to June 30, 1891, and paid to the defendant $56.25, protesting that he had no authority to demand the tax, and delivered to him a protest in writing setting forth that, in making the return and in paying the tax, it did not admit the validity of the tax or defendant's authority to exact or collect it, but made the return and payment solely for the purpose of procuring the possession of the United States bonds belonging to it, which defendant had refused to release until such return and payment were made, and further protesting that it was not liable to the tax or any part of it. The bank's agent then made another demand upon defendant for the bonds; but he refused to deliver them until a return should be made of the average amount of its notes in circulation for the period from July 1 to August 25, 1891, and a tax paid thereon. Its agent then delivered such return to defendant and paid him $16.83, at the same time delivering a written protest in the same form as the one above mentioned. These transactions were with the defendant himself, and the money was paid to him in person.

"The Journals of the House of Representatives and the Senate of the United States for the first session of the Thirty-eighth Congress were put in evidence by plaintiff. The bank claim that these Journals show that the national-bank act originated as a bill in the House of Representatives; that when it passed the House it contained no provision for a tax upon the national banks, or upon any corporation, or upon any individual, or upon any property, nor any provisions whatever for raising revenue, and that all the provisions that appear to authorize the Treasurer of the United States to collect any tax on the circulating notes of national banks originated in the Senate by way of amendment to the House bill."

Which is the fact. The court say:

"The provision relating to taxation, which, it is alleged, was inserted by way of amendment in the Senate, appears as section 5214 of the Revised Statutes."

I am told by my friend the Senator from Iowa [Mr. Allison] that that is the very section involved here.

Mr. ALLISON. The same section.

Mr. SPOONER. The same section.

Now the court says:

"The contention in this case is that the section of the act of June 3, 1864, providing a national currency secured by a pledge of United States bonds, and for the circulation and redemption thereof, so far as it imposed a tax upon the average amount of the notes of a national banking association on circulation was a revenue bill within the clause of the Constitution declaring that 'all bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments as on other bills' (Article I, section 7); that it appeared from the official journals of the two Houses of Congress that while the act of 1864 originated in the House of Representatives, the provision imposing this tax was not in the bill as it passed that body, but originated in the Senate by amendment, and being accepted by the House became a part of the statute; that such tax was, therefore, unconstitutional and void; and that consequently the statute did not justify the action of the defendant."

The question could not, I think, be more clearly presented to the court than it is upon this statement of fact. The court say:

"The case is not one that requires either an extended examination of precedents or a full discussion as to the meaning of the words in the Constitution 'bills for raising revenue.' What bills belong to that class is a question of such magnitude and importance that it is the part of wisdom not to attempt, by any general statement, to cover every possible phase of the subject. It is sufficient in the present case to say that an act of Congress providing a national currency, secured by a pledge of bonds of the United States, and which, in the furtherance of that object, and also to meet the expenses attending the execution of the act, imposed a tax on the notes in circulation of the banking associations organized under the statute, is clearly not a revenue bill which the Constitution declares must originate in the House of Representatives.

"Mr. Justice Story has well said that the practical construction of the Constitution and the history of the origin of the constitutional provision in question proves that revenue bills are those that levy taxes

in the strict sense of the word, and are not bills for other purposes which may incidentally create revenue." (1 Story on Constitution, sec. 880.)

That was the language of Mr. Justice Story long ago, incorporated in this opinion and expressly affirmed, and also in the Ninety-first United States, by unanimous decision of the Supreme Court. The court continues:

"The main purpose that Congress had in view was to provide a national currency based upon United States bonds, and to that end it was deemed wise to impose the tax in question. The tax was a means for effectually accomplishing the great object of giving to the people a currency that would rest primarily upon the honor of the United States and be available in every part of the country. There was no purpose by the act or by any of its provisions to raise revenue to be applied in meeting the expenses or obligations of the Government. "

Now, Mr. President, I do not intend to take further time. Here is to be found, under the strongest possible sanction, a definition of the word "revenue," as used in this constitutional provision, made a great many years ago by Judge Story, practically adopted by both bodies ever since, sustained by a number of decisions which I have not stopped to even note, and lastly sustained in language too plain for dispute by the Supreme Court of the United States. Nothing can be plainer than that this bill and kindred. bills do not fall within that definition.

There seem to be no answer to the suggestion of the Senator from Rhode Island [Mr. Aldrich] that if section 1 as sent to us by the House of Representatives is a revenue bill within the meaning of section 7 of article I of the Constitution we have a right under that clause to add to it a tariff bill or amendments to the internal-revenue law. An attempt to treat the bill as a revenue bill for such a purpose could not fail to excite derision.

The conference report was agreed to by the Senate, and later by the House. No further action was proposed in the Senate at this time on the question of prerogative.

1495. The Senate having added certain revenue amendments to a non-revenue House bill, the House ordered the bill to be returned to the Senate.

The two Houses being at variance over a question of constitutional prerogative, the differences were submitted to a committee of conference.

On June 14,1878,[1] Mr. Joseph G. Cannon, of Illinois, as a question of privilege, offered the following resolution:

Resolved, That the House bill (No. 4286) to establish post routes in the several States therein named, with the Senate amendments thereto, be returned to the Senate, as a part of said amendments are in the nature of and constitute a revenue bill.

Mr. Cannon specified amendments as follows:

Section 11 gives the franking privilege to all Members of Congress and certain Department officers, clearly making it a revenue measure in the contemplation of the Constitution. The case in the Thirty-fifth Congress was for an increase of postage; this is for decreasing postage on matter forwarded through the mails. * * *

Sections 12 to 19, inclusive, provide what shall constitute second-class mail matter. A large portion of it is now by law charged 3 cents a pound. This provides the whole of it shall go at 2 cents a pound.

The next section provides for a tax of $1 upon every publisher in the United States before he shall be permitted to use the mail to send his papers at the 2-cent rate, a provision that is unknown to the law—a revenue provision. * * *

Again, section 18 allows foreign newspapers to be sent by the publisher or his agent through the mails at 2 cents a pound. * * *

[1] Second session Forty-fifth Congress, Journal, p. 1303; Record, pp. 4606–4613.

Again, sections 24 and 25 of this bill provide that an entirely new class of matter that never was permitted to go through the mails may go through the mails at 1 cent an ounce, changing the law and reaching out to gather revenue for the Department; a revenue to go into the Treasury. * * *

Mr. Cannon also called attention to a section subsidizing steamers, and another relieving railroads of certain duties in regard to delivering the mails.

The resolution was debated at length, attention being called to the fact that the bill, as it passed the House originally and was sent to the Senate, was neither a revenue bill nor an appropriation bill, but simply a post routes bill. The Senate, therefore, had not exercised their constitutional function of amending a revenue bill, but had originated revenue provisions.

The resolution was agreed to, yeas 169, nays 68.

On the same day, in the Senate,[1] the resolution of the House was received and considered. Various propositions were made—one that the Senate insist on its amendments and ask a conference. But it was objected that a conference might not take place in this manner when the House had not acted on the Senate amendments. Finally, Mr. Thomas W. Ferry, of Michigan, proposed a preamble reciting the circumstances and the following resolution:

Resolved, That a committee of conference be appointed to confer with a like committee on the part of the House touching the matters of difference between the two Houses indicated by said House resolution, and invite the House to agree to such conference.

It was objected that a conference might not be held except in case of disagreeing votes, but in reply Jefferson's Manual was quoted to show that conferences might be asked in cases of difference of opinion.

The resolution and preamble were agreed to by the Senate, and the action was reported to the House, where, on June 15, the request of the Senate for a conference was agreed to. The conferees of the two Houses were Senators T. W. Ferry, of Michigan, S. J. Kirkwood, of Iowa, and S. B. Maxey, of Texas; Representatives J. G. Cannon, of Illinois, W. R. Morrison, of Illinois, and A. M. Waddell, of North Carolina.

On June 17[2] the conferees submitted written reports to their respective Houses, stating that they had been unable to agree, and asking a new committee. The further conference was ordered by both Houses and the new conferees were appointed, the same ones being reappointed, except that Senator A. S. Paddock, of Nebraska, took the place of Mr. Ferry, and Representative John G. Carlisle, of Kentucky, the place of Mr. Morrison.

On June 18[3] the conferees reported as follows:

The committee of conference * * * have met, and after full and free conference have been unable to agree touching the matter of difference between the two Houses indicated by said resolution.

The conferees on the part of the Senate propose to waive the discussion as to the question of privilege at issue between the two Houses, and to take up the House bill with the Senate amendments thereto and consider them for the purpose of 1ring a report upon the several matters embraced therein.

The conferees on the part of the House decline to agree to this proposition, for the reason that they do not, in their opinion, possess any power under the resolution of the House to consider the bill or amendments without an enlargement thereof.

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[1] Journal, pp. 1310, 1311, 1334; Record, pp. 4592, 4596, 4680.

[2] Journal, p. 1394; Record, pp. 4719, 4767.

[3] Journal, p. 1410; Record, pp. 4787, 4824.

The attempt to reconcile the two Houses failed with this conference, and the bill did not become a law.

The House subsequently passed, under suspension of the rules, a post-route bill embodying the unobjectionable amendments of the Senate.

1496. In 1889 Senate amendments to a House revenue bill were questioned in the House as an infringement of the House's privilege.—On February 15, 1889,[1] Mr. Roger Q. Mills, of Texas, as a question of privilege, from the Committee on Ways and Means, to whom was referred the amendment of the Senate to the bill (H. R. 9051) to reduce taxation and simplify the laws in relation to the collection of the revenue, reported the same, accompanied by a report and the following resolution:

Resolved, That the substitution by the Senate, under the form of an amendment, for the bill of the House (H. R. 9051), entitled "An act to reduce taxation and simplify the laws in relation to the collection of the revenue," of another and different bill, containing a general revision of the laws imposing impost duties and internal taxes, is in conflict with the true intent and purpose of section 7, Article I, of the Constitution, and that said bill and substitute be returned to the Senate with the respectful suggestion that said section vests in the House of Representatives the sole power to originate such a measure.

In their report the committee say:

The House bill was passed on the 21st day of July, 1888, and transmitted to the Senate on the 23d day of the same month. It was referred to the Committee on Finance on the 25th day of July, and by that committee reported back to the Senate on the 4th day of October, 1888, with the recommendation that the enacting clause be stricken out and that an entirely new bill be substituted. The Senate, without reading the House bill, proceeded to consider the substitute, with occasional interruptions, until the adjournment of Congress.

When Congress reassembled in December last the consideration of the substitute was resumed, and on the 22d of January the final vote upon the measure was taken in the Senate, the House bill having never been read except by title. The bill of the House contained 67 pages; the Senate substitute contains of the same print 179 pages; the House bill embraces certain specified items of our revenue; the Senate substitute proposes an original revision of our entire revenue system.

The report then goes to discuss the constitutional question, citing the action of the Senate in 1844 and the precedents of the Forty-first and Forty-seventh Congresses.

On February 22 Mr. Mills called up the resolution, but the House, by a vote of yeas 89, nays 144, refused to consider it. The resolution and the bill do not appear again.

1497. Instances wherein the Senate has acquiesced in the Constitutional requirement as to revenue bills, while holding to a broad power of amendment.—On January 5, 1903,[2] in the Senate, Mr. Henry Cabot Lodge, of Massachusetts, in the course of debate on a Senate bill to suspend the duty on coal for a period of ninety days, said:

It is a bill to suspend for ninety days the duties on coal imported into the United States. I am perfectly aware, of course, that no such bill can originate in this body and that this body can take no action upon such a measure until it comes over to it from the House. I introduce the bill simply because I desire to call attention here and elsewhere to the subject, and to ask for it the prompt consideration of the Senate Committee on Finance.

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[1] Second session Fiftieth Congress, Journal, pp. 507, 589; Record, pp. 1936, 2208; Report No. 4055.

[2] Second session Fifty-seventh Congress, Record, p. 484.

Mr. Charles A. Culberson, of Texas, said:

I desire to say that it seems to me the Senator from Massachusetts, who has just taken his seat, misconceives the provision of the Federal Constitution with reference to revenue bills. The Constitution provides that all bills for "raising" revenue must originate in the House of Representatives, but I do not understand that by that clause the origination of bills in the Senate which have an entirely opposite purpose, or, in other words, the purpose of cutting off absolutely revenue derived from a specific article is prohibited.

On January 8, 1903,[1] the Senate considered the following resolution:

Resolved, That the Committee on Finance be instructed to prepare and report a bill amending "An act to provide revenue for the Government and to encourage the industries of the United States," approved July 24, 1897, so that the tariff duty shall be removed from anthracite coal and the same be placed on the free list.

In the course of the debate Mr. Nelson W. Aldrich, of Rhode Island, said:

The precedents in the Senate and in the House, as well as the restrictions of the Constitution itself, from my standpoint, preclude that action. I understand, of course, that the Senator from Missouri may hold a different view. A different view has been announced by Senators upon the other side of the Chamber. But I submit to the Senate that an attempt to afford relief, which, as the Senator says, is demanded at once, through a method which would only precipitate a discussion here and elsewhere as to the constitutional rights of the Senate and as to the constitutional prerogative of the House of Representatives—a discussion which in its very nature would outlast the coal famine—is not a practical method of securing results. The House of Representatives has always affirmed the position to the contrary, and the Senate has universally yielded, whatever might have been the individual opinions of Senators as to that contention.

Mr. George F. Hoar, of Massachusetts, after citing the precedent in the House, when Mr. Hooper, of Massachusetts, submitted a report, said:

The greatest constitutional authority in this country—save Marshall, as we all agree on both sides—Mr. Webster, declared in the Senate that, whatever might be the opinion of the Senate on this question, it was in the nature of the case absolutely clear that it was a matter which must be settled always by the sole opinion of the House of Representatives, and that, whatever the Senate might think, the House was the sole constitutional judge of the extent, meaning, and scope of that constitutional provision.

A little reflection will show that Mr. Webster was clearly right. We can not refuse to consider a House bill on such a subject, because we are bound to consider their bills, and we do not deny that they have the right to originate them. So, of course, we can not interfere with their bills. On the other hand, the House has a perfect right to refuse to consider bills which it regards as bills for raising revenue, when they come from the Senate, on the constitutional ground that we have nothing to do with that subject in its origin, and we can not help ourselves.

So practically the Constitution has tied our hands, and the worst thing that can happen to the cause of relieving the present distress of the people by getting free coal, either for a time or permanently, is what the Senator from Missouri has caused to happen, as far as he can—that is, the stirring up of a controversy between the two Houses of Congress.

On January 21[2] Mr. John C. Spooner, of Wisconsin, said:

I have a conviction, Mr. President, that it is not in the power of the constitution of the Senate to originate a bill which increases a tariff rate, or reduces a tariff rate, or removes a tariff rate; and for the purpose of securing from the committee a report upon that subject—and it would be as well for that purpose to secure a report upon this resolution as any other measure—with the consent of the Senator from Missouri, I move the reference of the resolution to the Committee on Finance.

After brief debate the motion of Mr. Spooner was agreed to.

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[1] Record, pp. 592, 594.

[2] Record, p. 1031.

1498. On February 17, 1879,[1] while the Senate was considering a bill of the House relating solely to the internal revenue, Mr. Stanley Matthews, of Ohio, proposed an amendment regulating the duty on tea and coffee. Mr. James B. Beck, of Kentucky, objected that such an amendment, affecting as it did the tariff, was not proper to a bill strictly confined to the internal revenue. After debate on the constitutional question the Senate decided, ayes 22, noes 16, that the amendment was in order.

1499. In the Forty-seventh Congress[2] the Senate originated and passed a bill (S. 22) to provide for the appointment of a commission to investigate the question of the tariff and internal-revenue laws. After this bill had been debated in the Senate a bill of identical title (H. R. 2315) was introduced in the House, and was under debate in the House when the Senate bill came over. The House continued with its own bill and passed it.[3] Then the Senate passed[4] the House bill and it became a law.

1500. Discussion by a committee of the House of the constitutional right of the Senate to originate bills appropriating money from the Treasury.—On March 11, 1880,[5] the bill (S. 1157) entitled "An act authorizing the Secretary of the Treasury to purchase additional lots of ground adjoining the new building for the Bureau of Engraving and Printing" was reported from the Committee on Public Buildings and Grounds. A question having arisen as to the clause of the bill making an appropriation, it was referred to the Committee on the Judiciary[6] with instructions to inquire into the right of the Senate under the Constitution to originate bills making appropriations of money belonging to the Treasury of the United States.

On February 2, 1881, Mr. J. Proctor Knott, of Kentucky, from the Committee on the Judiciary, submitted a report[7] recommending the adoption of this resolution:

Resolved, That the Senate had the constitutional power to originate the bill referred, and that the power to originate bills appropriating money from the Treasury of the United States is not exclusive in the House of Representatives.

The minority of the committee, Messrs. Hurd, House, Ryon, Lapham, and Williams, filed dissenting views, recommending these resolutions:

Resolved, That the seventh section of article 1 of the Constitution, which provides that "All bills for raising revenue shall originate in the House of Representatives," confers exclusive power upon the House to originate bills appropriating money from the public Treasury.

Resolved, That the Senate bill which has been referred to this committee be returned to the Senate of the United States with a copy of these resolutions.

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[1] Third session Forty-fifth Congress, Record, pp. 1478–1482.

[2] First session Forty-seventh Congress, Record, p. 2342.

[3] Record, p. 3687.

[4] Record, pp. 3695, 3742.

[5] Second session Forty-sixth Congress, Record, p. 1484.

[6] The members of the Committee on the Judiciary were J. Proctor Knott, of Kentucky; John T. Harris, of Virginia; David B. Culberson, of Texas; Frank H. Hurd, of Ohio; John F. House, of Tennessee. John W. Ryon, of Pennsylvania; Hilary A. Herbert, of Alabama; Jeptha D. New, of Alabama; N. J. Hammond, of Georgia; Elbridge G. Lapham, of New York; George D. Robinson, of Massachusetts; Thomas B. Reed, of Maine; Wm. McKinley, of Ohio; Charles G. Williams, of Wisconsin, and Edwin Willits, of Michigan.

[7] Report No. 147, third session Forty-sixth Congress.

The report and the views of the minority were ordered printed, but no further action was taken either on them or on the bill in question.[1]

Both the majority and minority submitted exhaustive arguments in support of their respective positions. The majority contended that if the words of the Constitution were to be taken in their ordinary acceptation, it was difficult to conceive how there could possibly be two opinions, for the distinction between raising revenue and disposing of it after it had been raised was sufficiently obvious to be understood by even the commonest capacity. It was true that from the time the Constitution was framed there had been an impression, more or less general, that this clause had a much broader signification than its terms implied. Many, including Mr. Madison, Mr. Webster, and Justice Storey, had seemed to regard the expression "bills for raising revenue" as synonymous with the term "money bills." The committee then examines the use of the term "money bills," especially with reference to the usages of the British Parliament, where money has long been raised and expended by the same bills. In Massachusetts, where the constitution provided that "money bills" should originate in the House of Representatives, the supreme court had given the opinion that this did not preclude the origination of appropriation bills by the Senate. Both at the time of the formation of our Constitution, as well as since, the appropriation of the revenue was in England a mere incident to measures by which it was granted to the Crown and brought into the exchequer. The House of Commons claimed and exercised the exclusive right both to raise and appropriate the revenue. With this example in their minds the framers of our Constitution, had they intended to confine the origination of appropriation bills to the House, would have done so in perfectly plain and unequivocal terms. In the debates on the Constitution the policy of investing the House with the exclusive privileges of the English Commons in regard to "money bills" was persistently urged, and it was to be assumed that the refusal to do this was significant of an intention not to give to the House the exclusive privilege. In the Senate in 1856 the question of originating some of the general appropriation bills was discussed, and such bills were framed and sent to the House. These bills were laid on the table in the House, not because of a contention that the Senate had transgressed the constitutional privilege of the House, but because similar bills had already passed the House. The committee decline to discuss the policy of the principle, but only refer to its strict constitutional basis.

The minority, in their views, gave six reasons:

1. That the word "revenue" meant money received into the Treasury for public uses, and the words "raising revenue" must include bills appropriating money to the use of the Government, as well as bills providing for levying and collecting taxes. This was shown from the English precedents, where the essential act to constitute the money raised revenue was the grant, without which not one dollar could be used for the national expenses.

2. The proceedings of the Constitutional Convention showed very clearly that the term "revenue" was intended to be used in its ordinary sense of appropriating as well as collecting money for uses of the Government. The committee review these proceedings carefully in support of this position, and also examine the English

[1] Third session Forty-sixth Congress, Journal, p. 309; Record, p. 1146.

precedents. Incidentally dissent is expressed as to the decision of the supreme court of Massachusetts.

3. The speeches in the conventions of the different States called for the consideration of the Constitution; the writings of the friends of that instrument, published for the purpose of securing its adoption; the expressions of members of the Constitutional Convention, and the opinions of the ablest commentators on the Constitution all showed that the phrase "bills for raising revenue" was the equivalent of "money bills," which in the English Government at the time of the framing of our Constitution included bills of appropriation. The minority give citations in support of this.

4. From the time of the first Congress appropriation bills had, with few exceptions, originated in the House. By unvarying usage all general appropriation bills had originated in the lower branch of Congress. The action of the Senate in 1857 [1856] emphasized this rule. The first appropriation bill provided in its opening section the sources from which the money should be drawn, and afterwards directed the purposes to which it should be applied. In one of the first bills for the imposition of duties it was provided that out of the proceeds a sum of $600,000 should be set aside annually for the public expenditure, and in almost every general appropriation bill until 1813 it was declared that out of that $600,000 the sums set aside for particular purposes should be paid. These enactments were in manifest analogy to similar legislation in the British Parliament and show plainly that the early opinion was universal that the House of Representatives possessed the same power over money bills which belonged to the House of Commons.

5. The minority cite the terms of the Constitution itself in confirmation of their view.

6. The immediate representatives of the people should have the control of the purse, and the power of originating appropriation bills was a trust which should be retained.[1]

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[1] On February 8, 1888, during the consideration of the bill (S. 371) to aid in the establishment of common schools, the constitutional power of appropriation was debated at some length in the Senate. (First session Fiftieth Congress, Record, pp. 1046–1055.)

On May 15, 1888, the Senate debated the constitutional right of the House in the origination of appropriation bills, and also the subjects of amendments to such bills by the Senate. (First session Fiftieth Congress, Record, pp. 4151–4158.)

On January 7, 1856, during the prolonged contest over the election of a Speaker in the House, and while the House, from its disorganized condition, was unable to transact any business, Mr. Richard Brodhead, jr., of Pennsylvania, presented in the Senate a proposition that the Committee on Finance be directed to inquire into the expediency of reporting the appropriation bills, with a view of obtaining a more speedy action on them than could be obtained by awaiting the action of the House. After a debate involving to some extent the constitutional right of the Senate to originate these bills, the resolution was agreed to. On February 4, Mr. Robert M. T. Hunter, of Virginia, from the Committee on Finance, reported that they had had the resolution under consideration and had deemed it best for the Senate to instruct them by the adoption of this resolution:

Resolved, That the Committee on Finance be instructed to prepare and report such of the general appropriation bills as they may deem expedient.

On February 7 this resolution was agreed to after a debate on the constitutional question involved, Mr. William H. Seward, of New York, making an especially strong plea against departing from the practice since the foundation of the Government. (First session Thirty-fourth Congress, Globe, pp. 160, 349, 375.)

But while there has been dispute as to the theory, there has been no deviation from the practice that the general appropriation bills (as distinguished from special bills appropriating for single, specific purposes) originate in the House of Representatives.

1501. In 1885 the House, after learned debate, declined to investigate the power of the Senate to originate bills appropriating money.

Whenever it is asserted on the floor that the privileges of the House are invaded, the Speaker entertains the question.

On January 23, 1885,[1] Mr. Frank H. Hurd, of Ohio, as a question of privilege, submitted the following:

> Whereas certain bills appropriating money from the Treasury of the United States, originating in the Senate, have passed that body and have been sent to this House for its concurrence, which are now upon the Speaker's table, to wit, Senate bill No. 398, entitled "A bill to aid in the establishment and temporary support of common schools," and many others; and
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> Whereas it is asserted that these bills are in violation of the privilege of this House to exclusively originate bills for raising revenue: Therefore be it
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> *Resolved,* That the Committee on the Judiciary be hereby directed to inquire into the power of the Senate to originate bills appropriating money from the Treasury of the United States, and report to this House at as early a day as practicable.

Mr. J. Frederick C. Talbott, of Maryland, made the point of order that the resolution did not present a question of privilege.

The Speaker[2] said that whenever it was asserted on the floor of the House that the rights or privileges of the House had been invaded or violated, it was the duty of the Chair to entertain the said question, at least to the extent of submitting it to the House. Therefore he overruled the point of order.

The House then proceeded to the consideration of the resolution, Mr. Hurd offering in its support an elaborate constitutional argument.

After debate, Mr. Albert S. Willis, of Kentucky, moved to lay the resolution and preamble on the table.

This motion was agreed to, yeas 128, nays 123.

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[1] Second session Forty-eighth Congress, Journal, pp. 316, 317; Record, pp. 948–962.

[2] John G. Carlisle, of Kentucky, Speaker.